

Property Agents Social Media Guidelines



The Property Agents Board regulates conduct of property agents within Tasmania.

These guidelines were developed to assist property agents understand their obligations when using social media. They apply to all property agents, meaning all real estate agents, property managers, general auctioneers and property representatives.

Summary

When using social media, property agents should remember the conduct requirements under the *Property Agents & Land Transactions Act 2016* ("the Act") and the associated Code of Conduct. The conduct requirements of the Act and Code of Conduct apply at all times to the conduct of property agents, including when engaging with the public by social media.

Property agents should only post information to social media that is not in breach of the conduct requirements of the Act and Code of Conduct by:

- Complying with any relevant advertising obligations under sections 54, 55, 56, 57, 58, 62, 64 and 65 of the Act;
- Complying with confidentiality and privacy obligations, including the obligation to not disclose information of a client or former client without consent;
- Not holding themselves out to be carrying on a business, other than the real estate agency, property management or general auctioneering business with which they are employed;
- Not engaging in conduct that would breach any other Australian law, including engaging in behaviour that may breach the Australian Consumer Law, for instance, by advertising that may be misleading or deceptive.

Introduction

The use of social media by property agents in marketing their services and business is an important tool for property agents, as it allows property agents to connect with clients on a personal level, and advertise the successes of the property agents.

Property agents need to be aware of the conduct requirements in engaging in social media, whether in a personal capacity or a professional capacity, and the standards to which the community would hold a reasonably competent property agent.

Property agents should be aware that information circulated on social media may end up in the public domain, and remain there, irrespective of the intent at the time of posting.

Property agents also should be aware that statements made on social media may be taken by a member of the public to be a statement in relation to the property agent's profession.

Who needs to use these guidelines?

All property agents should be aware of the implications of using social media. This includes a real estate agent, a property manager, a general auctioneer, and property representatives.

Definition of Social Media

“*Social Media*” describes the online and mobile tools that people use to share opinions, information, experiences, images, and video or audio clips, and includes websites and applications used for social networking.

Common sources of social media include, but are not limited, social networking sites such as Facebook, LinkedIn, blogs, True Local and Twitter, and content-sharing websites such as YouTube and Instagram, and discussion forums and message boards.

Obligations in relation to Social Media

When using social media, property agents should be aware of their obligations under the Code of Conduct and the Act, and other relevant legislation, such as privacy legislation and Australian Consumer Law.

1. Professional Obligations

The Act and Code of Conduct contains requirements and guidance about the standards of competency and conduct of a property agent. These apply to a property agent whether they are interacting with the public in person, in correspondence, or online.

Any conduct of a property agent that would breach the Act or the Code of Conduct in advertising, or otherwise when interacting with a member of the public or a client, is not to be engaged in using social media.

This includes:

- any behaviour that may constitute unsatisfactory professional conduct or professional misconduct, with reference to the Act and the examples in clauses 16 and 17 of the Code of Conduct;
- any behaviour that may constitute misleading conduct, harassment or unconscionable conduct under clause 18 of the Code of Conduct;
- the general duties of a property agent to their client as set out in clause 8 of the Code of Conduct;
- the duty to warn a customer that any information disclosed to a property agent may be disclosed to a client of the property agent in clause 8(e) of the Code of Conduct;

- the duty not to disclose information obtained while acting for a client, without the client’s consent in writing to the disclosure in clause 9(a) and (b) of the Code of Conduct;
- the advertising and marketing requirements of clause 11 of the Code of Conduct;
- the overriding duty that a property agent not act in any way that is, or may be, detrimental to the reputation or interests of the property agents industry in clause 15 of the Code of Conduct.

2. Your Online Identity

Social media blurs the line between our personal and professional lives. Since your online identity can be taken as your professional identity, be professional, courteous and respectful at all times. Any references to your place of business or your profession may imply that you are acting in a professional capacity.

When posting on social media sites and applications, consider that this may reflect on you in your professional capacity. Always remember that you are bound by the property agents professional conduct requirements and the overriding duty to uphold reputation and interests of the property agents industry.

If you are unsure of whether your post will breach your conduct requirements, you should err on the side of caution. *“If in doubt, don’t”*.

3. Client information

Property agents must be careful in using social media not to disclose a client’s personal information or information relating to the client’s affairs.

The Code of Conduct requires a property agent not to disclose information relating to the affairs of a client or otherwise, obtained while acting for a client or use information without the client’s consent in writing (clause 9(a) and (b) of the Code of Conduct).

Examples might include:

- Posting on a client’s Facebook page after a successful sale in a way which discloses personal details – *“Congrats on the sale! Your sale was a windfall. Hope it helps you pay for the divorce! Say hi to the new boyfriend!”*
- Using a client’s feedback as a testimonial without their consent, for instance, showing a thank you letter in a YouTube video or posting it on Twitter or Facebook.
- Linking a client with a prospective purchaser or tenant on Facebook *“John, this is Sally I told you about. She is interested in your place in Elizabeth Street, North Hobart”*.

4. Misleading and Deceptive Advertising

S.18 of the Australian Consumer Law requires that a person must not engage in conduct that is “*misleading or deceptive or is likely to mislead or deceive*”.

The ACCC provides the following advice to professionals, including property agents, on misleading and deceptive conduct:

“Misleading and deceptive conduct – whether that conduct actually misleads clients or is merely likely to mislead them – is prohibited. Generally, this type of conduct involves leading someone into error, or being likely to, and includes behaviour such as:

- *Lying*
- *Leading someone to a wrong conclusion*
- *Creating a false impression*
- *Leaving out (or hiding) important information*
- *Making false or inaccurate claims*

It is irrelevant whether these are done intentionally or not. A business can break the rules by both deliberate and inadvertent actions.

When advertising goods or services, professionals, like businesses, need to consider the overall impression that the advertisement gives the audience. It should be accurate and contain all essential information. The same applies when negotiating or dealing with clients directly, or in any other way. Any representations made by a professional must be accurate and be able to be substantiated.”¹

Property agents should be sure that all postings on social media comply with the Australian Consumer Law.

This is important as advertising that is in breach of the Australian Consumer Law may also constitute professional misconduct or unsatisfactory professional conduct under the Act.

5. Holding Out as Carrying on a Business

A property agent must be aware of the prohibition in section 34 of the Act that a person must not carry on a real estate agency business, or hold themselves out as prepared to carry on a real estate agency business, unless they are licensed to do so. Likewise, the prohibition in section 35 of the Act that a person must not carry on a property management business or hold themselves out as prepared to carry on such a business unless they are licensed to do so and section 59 of the Act that a person must not carry on a general auctioneering business or hold themselves out as prepared to carry on such a business unless they are licensed to do so.

¹ Australian Competition & Consumer Commission, *Professions and the Competition and Consumer Act*, p18

A common problem for property agents is the use of social media sites to advertise individual services, but in doing so, the property agent gives a false appearance of carrying out a real estate agency business. For instance, a Facebook page in the name of “*John Smith Property*” implies that John Smith owns his own real estate agency business.

A property agent ought to connect themselves with that person’s authorised place of business in any online interaction. A better approach to using social media as a promotional tool is for property agents to advertise in their own name, for instance, “*John Smith*”, clearly state that they are employed by a licensed real estate agency business (or property management or general auctioneering business) with the name and address of that business.

This will avoid giving a false impression to the public that the person is carrying on their own unlicensed real estate agency, property management or general auctioneering business.

6. Supervision Requirements

Where the supervision requirements of the Code of Conduct apply to a property agent, the property agent is required to ensure that all its employees understand and comply with the Act, regulations and the Code of Conduct. This includes the use by an employee of social media.

An employer should be aware of how its employees use social media in their professional life, should provide guidance for their employees in the use of social media, and should ensure that social media complies with the property agent’s conduct requirements of the Act and Code of Conduct.

Conclusions

The purpose of these guidelines is to provide guidance to property agents with respect to their responsibilities when interacting with the public, clients and customers on social media.

Ultimately, it is a property agent’s responsibility to comply with the requirements of the Act and the conduct rules in the Code of Conduct. If you are unsure whether your action will breach the Code of Conduct, you should err on the side of caution. As a property agent you should ensure that you understand the professional conduct rules that apply to you, and act honestly and with integrity at all times, including in social media and online forums.